

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHAD H. HAMBY, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

POWER TOYOTA IRVINE, a business entity
form unknown; and DOES 1 through 75,
inclusive,

Defendants.

Civil No. 11-CV-544-BTM (BGS)

**SCHEDULING ORDER IN RE
SCOPE OF UNCONSCIONABILITY
DISCOVERY & MOTION TO
COMPEL ARBITRATION**

On July 18, 2011, District Court Judge Moskowitz granted Plaintiff's ex parte motion for discovery and stay of Defendant's motion to compel arbitration. (Doc. No. 25.) The Court ordered that "Plaintiff may conduct discovery on the issue of unconscionability." (*Id.* at 2.) Judge Moskowitz referred the parties to Magistrate Judge Skomal to decide the scope of discovery and all applicable deadlines. (*Id.* at 2.) On August 22, 2011, the Court held a telephonic Case Management Conference with counsel for Plaintiffs and Defendant to discuss the scope and timeline of the limited discovery. The parties retain the right to object to discovery served, but the Court will allow discovery¹ as follows:

1. Plaintiffs may serve written discovery on the following areas:

a. The issue of procedural unconscionability;

¹ Unless otherwise noted, the discovery to be propounded may only encompass the time period of February 16, 2009 to the present.

- 1 b. Plaintiffs' proposal No. 1 in the parties' joint statement regarding
2 discovery
3 (Doc. No. 29 at 8, ¶1);
- 4 c. Plaintiffs' proposal No. 2 in the parties' joint statement regarding discovery
5 (Doc. No. 29 at 9, ¶2);
- 6 d. To the extent it is in Defendant's possession, custody, or control, Plaintiffs'
7 proposal No. 3 in the parties' joint statement regarding discovery (Doc. No. 29 at 9, ¶3) relating to
8 the two specifically identified arbitrators in the agreement, NAF and AAA;
- 9 e. To the extent it is in Defendant's possession, custody, or control, the costs
10 of prior individual arbitration as identified in Plaintiffs' proposal No. 4 in the parties' joint statement
11 regarding discovery (Doc. No. 29 at 9, ¶4);
- 12 f. To the extent it is in Defendant's possession, custody, or control, prior
13 individual arbitration results against Defendant as identified in Plaintiffs' proposal No. 4 in the
14 parties' joint statement regarding discovery (Doc. No. 29 at 9, ¶4). The parties are to meet and confer
15 regarding any issues on burden and privacy objections;
- 16 g. The case names and numbers of Defendant's prior attempts to compel
17 arbitration where the arbitration clause has been found unconscionable;
- 18 h. Individual cases brought in court or through arbitration regarding Equal
19 Credit Opportunity Act claims;
- 20 i. The approximate number of customers with whom Defendant has cancelled
21 contracts;
- 22 j. The Court denies without prejudice Plaintiffs' proposal No. 8 in the parties'
23 joint statement regarding discovery (Doc. No. 29 at 9, ¶8);
- 24 k. Plaintiffs' proposal No. 9 in the parties' joint statement regarding
25 discovery
26 (Doc. No. 29 at 9, ¶9) relating to the two specifically identified arbitrators in the agreement, NAF and
27 AAA; and
- 28 l. Plaintiffs may not take any depositions absent prior approval of the Court.

